



Advocacy Update 2023 Session

by Dan Chun, FAIA

The State Legislature completed an eventful 2023 session on May 4 and your AIA Hawaii Legislative Action Group (LAG) has been hard at work. Two important licensing and public procurement bills relating to architects passed. The full text of the changes to these long-standing laws are included here.

Both of the below bills (HB 217 and HB 1184) are in Governor Green's office waiting to be signed into law or vetoed. AIA will update our members as to the effective date of HB 217 as it directly affects stamping and signing permit drawings.



1. LICENSING LAW CHANGE in [HOUSE BILL 217 RELATING TO HOME RENOVATIONS](#)

The residential dollar-based exemption in HRS 464-13 has not been increased for 43 years, since 1979. AIA Hawaii successfully opposed bills to increase dollar-based exemptions in 1995, 2006 and 2022. However, the current surge of inflation made our position of opposition impossible to sustain. Therefore, AIA did not outright oppose HB 217, deciding instead to negotiate for the best position.

We worked with the legislature to remove increased exemptions for non-residential projects and proposed that the new dollar values be based on the cost of renovating up to 50% of a typical 1,200 sf home (less 10% for a 2-story home).

The new language maintains the original idea from the 1931 exemption law for smaller-scale repairs to 1-2 story buildings. It still has the same dollar-based exemptions for non-residential buildings and for public works of state and county agencies under HRS 464-4. The language clarifies that private landowners also have the same discretion related to life safety and design quality issues.

Our updated Hawaii law is now similar to New York state licensing law.

Closely related was [Senate Bill 781 Relating to Clean Energy](#) that proposed to increase all four dollar-based exemptions by 4x the current amounts in HRS 464-13. We strongly opposed this bill with your help as 130 architects signed our petition. SB 781 ultimately failed to pass during hectic conference committee procedures on the final day of session.

The following shows the edits made to the law: (Language removed is in brackets and stricken. New language is underscored.)

SECTION 2. Section 464-13, Hawaii Revised Statutes, is amended to read as follows:

"~~§464-13 Structures exempted from provisions of chapter.~~ (a) The provisions of this chapter shall not apply to work in respect to any privately owned or privately controlled one-storied building~~[, dwelling,]~~ or structure, the estimated cost of which does not exceed \$40,000, nor to any privately controlled two-storied building~~[, dwelling,]~~ or structure, the estimated cost of which does not exceed \$35,000. ~~[However, no structure, dwelling, or building in which the principal structural members consist of reinforced concrete or structural steel having riveted, bolted, or welded connections shall be exempted from this chapter.]~~

(b) The provisions of this chapter shall not apply to work in respect to any privately owned or privately controlled one-storied ~~[structure, which is used primarily as~~ a] residence, the estimated cost of which does not exceed ~~[\$50,000,]~~ \$180,000, nor to any privately owned or privately controlled two-storied ~~[structure, which is used primarily as~~ a] residence, the cost of which does not exceed ~~[\$45,000-]~~ \$162,000.

(c) Whenever the exemption provided for in subsection (b) is applied to the construction of a new ~~[building,]~~ residence, it shall be noted and recorded with the bureau of conveyances.

.(d) Notwithstanding subsections (a) and (b), the following work shall not be exempt from the requirements of this chapter:

(1) Any building, structure, or residence in which the principal structural members consist of reinforced concrete or structural steel having riveted, bolted, or welded connections;

(2) Any structure or improvement for which the State, a county, or political subdivision requires the use of an appropriately licensed design professional, including but not limited to:

.(A) Structures within special management areas, flood hazard areas, and special design districts; or

.(B) Improvements resulting from conditional use or other discretionary zoning permits, code compliances or variances, and building permit expediting procedures; and

(3) Any improvement resulting from rules established by a landowner or an association of owners for private property owned by the landowner or association of owners."

2. PUBLIC PROCUREMENT LAW CHANGE in [HOUSE BILL 1184](#)

This makes a change to the 2003 Hawaii Qualifications-Based Selection law used to solicit and award public design contracts. The edits account for rare situations when less than three (< 3) design professionals submit letters of interest to public agencies.

In 2016, AIA Hawaii and ACECH engineers successfully opposed the bill for “less than three” after the Hawaii Supreme Court ruled that public agencies have no exception to the requirement. Last year, the bill appeared again, and in the course of negotiations AIA Hawaii promised the Legislature that we would not oppose the “less than three” changes if a dedicated subsection was created to separate this rarely-to-be-used process from the important main body of QBS law. There already is dedicated subsection where “at least any two persons” can be considered for small purchase design contracts.

We provided suggested language for this subsection and it was included as the basis for the 2023 bill. This subsection is most likely to be used by smaller public agencies; ex. the County of Kauai, where history indicates single engineering contracts proposed every other year failed to attract three competitors. All the public agencies supporting the bill indicated that they anticipate no need to use subsection(i) for architectural contracts because there are more competitors.

(i) If, after ten business days, fewer than three qualified persons respond to the additional notice of need posted pursuant to subsection (b), the purchasing agency may submit a request to the head of the purchasing agency, except as provided in paragraph (3), for approval to proceed under this subsection. Submissions shall be evaluated by the selection committee in accordance with subsection (e); provided that:

(1) For two qualified persons, the selection committee shall rank the qualified persons based on the criteria in subsection (e). If both persons hold the same qualifications, the selection committee shall rank the persons in a manner that ensures equal distribution of contracts among persons holding the same qualifications. The ranking shall be provided to the head of the purchasing agency for negotiations conducted in the manner set forth in subsection (h). The rankings of the selection committee shall not be overturned without due cause;

(2) For one qualified person, the selection committee shall first evaluate the person's qualifications and may then provide the name of the person to the head of the purchasing agency to negotiate a contract at a fair and reasonable price. If the head of the purchasing agency determines in writing that either the price of the offer received is not fair and reasonable, or that the qualifications of the offeror are not adequate to meet the procurement needs, the head of the purchasing agency may request approval from the chief procurement officer to proceed as if no person had responded;

(3) If no qualified person responds, the head of the purchasing agency may determine in writing that the need for the service continues and that there is no time for resolicitation or that resolicitation would likely be futile; provided that when making this determination, consideration shall be given to time constraints and competition in the marketplace; provided further that:

(A) In the event of this determination, the head of the purchasing agency shall submit a written request to the chief procurement officer for approval to engage in direct negotiations with a qualified person. The written request shall be made on a "Notice of No Interest" form provided by the chief procurement officer and shall include the following:

(i). The date of the solicitation notice and the estimated dollar amount of the contract; and

(ii). The names of persons on the list, including the situation in which no person responds; and

(B) If the requirements of subparagraph (A) are met, negotiations may proceed; provided that:

(i). The chief procurement officer shall post a copy of the request on an internet site accessible to the public for seven days;

(ii). Any objections to the request shall be submitted in writing and received by the chief procurement officer within the seven-day public posting period; and

(iii). The chief procurement officer has approved the request, after considering the circumstances of each individual case; and

(4) The determinations required by this subsection shall be final and conclusive unless the determinations are clearly erroneous, arbitrary, capricious, or contrary to law.

OTHER BILLS PASSED in 2023 Session of interest to architects:

Senate Bill 1468 **Relating to Land Surveyors:** authorizes land surveyors to enter private property to perform land surveying and protects them from criminal trespass laws.

House Bill 1033 **Relating to State Building Code Council:** adds a voting member to the SBCC from HIEMA.

Senate Bill 921 **Relating to Limitations of Action:** no statute of repose shall affect a condo association's right of action against a condo developer sooner than two years after developer control terminates.

OTHER BILLS FAILED in 2023 Session of interest to architects:

Senate Bill 499 / House Bill 320 **Relating to the Board of Professional Engineers, Architects, Surveyors, and Landscape Architects:** allowed the EASLA Board to revoke a license from a convicted licensee if the crime was related to the duties of their license (determined this was already covered under RICO law)

Senate Bill 618 / House Bill 1206 **Relating to State Permitting Office:** would create a State Permitting Office in DAGS to process permits for state-owned infrastructure. (failed in Government Operations Committee)

If you would like to be involved in legislative issues and tracking, please use the "Join a Committee Form" on the [Hawaii State Council webpage](#).
